

REMARKS/ARGUMENTS

Claims 1-25, and 27-39 are pending in the application, and claims 6-15, 35 and 37-39 are withdrawn from consideration. Applicants have added new claims 40 and 41 which depend from Claim 32 which has previously been acknowledged allowable. Applicants have amended claims 1 and 16 to include features from claims 3 and 18, respectively. Claims 2 and 17 have been amended to correct informalities. Applicants have amended the claim dependency of claims 4, 5, 19 and 20. Claims 3, 18, and 22-24 have been canceled without prejudice. No new matter has been added. Reconsideration and withdrawal of the rejections are respectfully requested.

As a preliminary matter, Applicants appreciate the Examiner's acknowledgement of allowable subject matter.

Claim 2 stands rejected under 35 USC 112 in view of an informality. Originally filed Claim 17 contains a similar informality. Applicants have amended claims 2 and 17 to correct the informality. Reconsideration and withdrawal of the rejection is respectfully requested.

Claims 1, 2, 4, 5, 16, 17, 19-24 and 36 stand rejected under 35 USC 102(b) as being anticipated by WO 01/82778 (Focus Surgery). The rejection of claims 22-24 has been rendered moot by the cancellation, without prejudice, of these claims. Applicants have amended claims 1 and 16 to include features from claim 3 and 18, respectively, and respectfully traverse the rejection as follows.

The Examiner has not provided support for the rejection of claims 3 and 18. Instead, the Examiner stated that it would be intuitive to a skilled artisan to include the recited features, which in essence amounts to a rejection based on Official Notice. Applicants are cognizant of the recent Supreme Court's decision in KSR, but note that the instant rejection clearly goes beyond the purview of the KSR decision. As noted in MPEP 2144.03, Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. Applicants respectfully request that the Examiner provide support for the assertion of obviousness or withdraw the rejection of claims 3

Appl. No. 10/787,532
Amdt. dated June 25, 2007
Reply to Office Action of June 13, 2007

PATENT

and 18 as applied to amended claims 1 and 16. For at least this reason, Applicants respectfully request reconsideration and allowance of claims 1, 2, 4, 5, 16, 17, 19-21 and 36.

Applicants respectfully traverse the 35 USC 103 rejection of Claims 3 and 18 over *Focus Surgery* for the reasons provided above. Namely, that the Examiner has not satisfied his burden to demonstrate *prima facie* obviousness in view of the admission that *Focus Surgery* fails to disclose or suggest the features of claims 3 and 18. Applicants respectfully request that the Examiner provide support for his assertion of obviousness, or withdraw the rejection of claims 3 and 18 as applied to amended claims 1 and 16.

Double patenting

Claims 1, 3-5, 16 and 18-20 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, and 3-5 of copending U.S. Patent Application No. 11/494387.

Applicants enclose herewith a terminal disclaimer with regard to copending U.S. Patent Application No. 11/494387. Accordingly, Claims 1, 4, 5, 16, 19 and 20 are believed to be in condition for allowance.

Withdrawn Claims

Applicants respectfully request that withdrawn method Claims 6 and 36 be allowed as they depend directly or indirectly from Claims 1 and 16 which are believed to be in condition for allowance.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

Appl. No. 10/787,532
Amdt. dated June 25, 2007
Reply to Office Action of June 13, 2007

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If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-298-4406.

Respectfully submitted,

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